IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL N0.569 OF 2002

Mr.Deepak Bapu Keluskar,
Age:34 years, Occ.Business,
R/o. Room No.16, Andheri
Versova Vallabhai Patel
Road, Plot No.29,Mumbai. ...APPELLANT.
(Orig.Accused No.9)

Versus

State of Maharashtra ...Respondent.

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Mr.C.K.Pendse, Advocate i/b. S.R.More & M.S.Mohite, for the Appellant.
Mrs.M.M.Deshmukh, APP, for the State.

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CORAM : S.B.MHASE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : JANUARY 11, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal, the appellant-original accused No.9 has challenged the judgment and order dated 16th April, 2002 passed by the learned Ist Adhoc Additional Sessions Judge, Nashik in Sessions Case No.50 of 2000. By the said judgment and order, the learned Sessions Judge has convicted the appellant under Section 412 of IPC and sentenced him to suffer R.I. for two years and to pay a fine of Rs.1000/-, in default R.I.

for six months.

2. We have heard Mr.Pendse, the learned Advocate for the appellant-orig.accused No.9 and Mrs.Deshmukh, the learned A.P.P for the State. We have also perused the evidence on record as well as the judgment and order of the learned Sessions Judge. Mr.Pendse, the learned Advocate for the appellant-original accused No.9 has stated that he does not want to argue on merit in respect of the conviction of the appellant and he wishes to restrict his arguments only to the quantum of sentence imposed upon the appellant.

3. Mr.Pendse has submitted that at the time of the incident, the appellant was in his twenties and besides the present case the appellant has a clean record. These submissions have not been controverted by the prosecution. Mr.Pendse submitted that in view of these facts and the facts of this case, the sentence of imprisonment be reduced to the period of imprisonment undergone by the appellant.

4. It is the prosecution case that original

accused No.1-Lansi Baptis De'Souza took the vehicle from Thane on hire stating that he wanted to make a trip to Shirdi. The vehicle was given to accused No.1 with driver Navnath Satale on 13.9.1998. However, thereafter, the driver Navnath Satale was found murdered near the Sinnar-Shirdi road and the vehicle could not be traced. Hence complaint came to be lodged. It is the prosecution case that original accused No.1 sold the vehicle to original accused No.10-Chandrakant Narayan Khedekar and the present appellant was an employee of original accused No.10. After more than a year thereafter i.e. on 18th September, 1999 the said vehicle was traced in Mumbai at a junction near Elphinstone Road. At that time, the present appellant was driving the vehicle.

5. No doubt the present appellant was found driving the vehicle which had been stolen. However it is pertinent to note that it is not the prosecution case that the vehicle had been sold to him by the accused. Thus, looking to the facts of this case, we are inclined to reduce the sentence of imprisonment to the period already undergone by

the appellant. However, we are inclined to increase the fine amount from Rs.1000/- as imposed by the learned Sessions Judge to Rs.5000/-, in default to suffer R.I. for one year.

6. In the result, the appeal is partly allowed. The judgment and order dated 16th April, 2002 passed by the learned Ist Adhoc Additional Sessions Judge, Nashik in Sessions Case No.50 of 2000 in respect of conviction of the appellant is maintained. However, the sentence of imprisonment is reduced to the period already undergone by the appellant and the fine amount is increased to Rs.5000/- in default to suffer R.I. for one year. The appellant has already paid the fine amount of Rs.1000/- as imposed by the learned Sessions Judge. Therefore, now the appellant would have to deposit an amount of Rs.4000/- only. The appellant is on bail. The appellant is granted eight weeks time to deposit the said amount of Rs.4000/- in this Court. In case the amount is not deposited within a period of eight weeks, the appellant shall be taken into custody and he shall serve the in default sentence of one year.

(SMT.V.K.TAHILRAMANI,J) **(S.B.MHASE,J.)**